

Assembly Bill No. 403

CHAPTER 388

An act to amend Section 12252 of the Probate Code, relating to attorney-client privilege.

[Approved by Governor October 10, 2007. Filed with
Secretary of State October 10, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 403, Tran. Attorney-client privilege.

(1) Under existing law, a client of a lawyer has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and lawyer if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder, or the person who was the lawyer at the time of the confidential communication. However, the lawyer may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

This bill would require the California Law Revision Commission to study whether and, if so, under what circumstances, the attorney-client privilege should survive the death of the client, and to report all of its findings to the Legislature on or before July 1, 2009.

(2) Under existing law, if subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause, the court is required to appoint as personal representative the person entitled to appointment and to give notice of the hearing of the appointment to the person who served as personal representative at the time of the order of discharge and to other interested persons, as specified.

This bill would require the appointed personal representative to be a holder of the decedent's lawyer-client privilege, as specified. The bill also would require the court to perform these functions when subsequent administration of an estate is necessary after the personal representative has been discharged because disclosure is sought of a communication that is deemed privileged in the absence of a waiver by a personal representative, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 12252 of the Probate Code is amended to read:

12252. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is

discovered, disclosure is sought of a communication that is deemed privileged in the absence of a waiver by a personal representative under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, or because it becomes necessary or proper for any other cause, both of the following shall apply:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order as is directed in relation to an original appointment, except that the person who served as personal representative at the time of the order of discharge has priority. The appointed personal representative shall be a holder of the decedent's lawyer-client privilege for purposes of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(b) Notice of hearing of the appointment shall be given as provided in Section 1220 to the person who served as personal representative at the time of the order of discharge and to other interested persons. If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be given as provided in Section 1220 to the Controller.

SEC. 2. The California Law Revision Commission shall study the issue of whether and, if so, under what circumstances, the attorney-client privilege should survive the death of the client. The commission shall report all of its findings to the Legislature on or before July 1, 2009.